

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

BRIAN RUNNELS, #39145

PETITIONER

VS.

CIVIL ACTION NO. 5:10-cv-158(DCB)(JMR)

JACQUELYN BANKS, Warden

RESPONDENT

ORDER

This cause is before the Court on the petitioner, Brian Runnels' Motion for Certificate of Appealability (**docket entry 45**). Having carefully considered the motion, and being fully advised in the premises, the Court finds as follows:

Since the Court previously denied the petitioner a Certificate of Appealability (C.O.A.) in its June 7, 2012, Final Judgment, the petitioner's motion is construed as seeking reconsideration of the Court's denial of C.O.A. Motions requesting reconsideration of court orders or judgments generally fall under Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. If the motion is filed within twenty-eight days of the entry of the order or judgment being challenged, it is treated as a Rule 59(e) motion. If the motion is filed after twenty-eight days, it is treated as a Rule 60(b) motion. See Lavespere v. Niagra Mach. & Tool Works, Inc., 910 F.2d 167, 173 (5th Cir. 1990). Since Runnels' motion was filed within the twenty-eight days, it is treated as a Rule 59(e) motion.

Rule 59(e) serves the purpose of "allowing a party to correct

manifest errors of law or fact or to present newly discovered evidence." Waltman v. Int'l Paper Co., 875 F.2d 468, 473 (5th Cir. 1989). In his motion, Runnels does not present any manifest errors of law or fact, nor does he present newly discovered evidence. Instead, he seeks only to call into question the correctness of the Court's denial of the C.O.A. Because the Court has already denied a C.O.A., and the petitioner raises no new arguments, the present motion to reconsider shall be denied.

Rule 11 of the Rules Governing §§ 2254 and 2255 Cases provides that if the court denies a C.O.A., "the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Runnels filed his Notice of Appeal on June 20, 2012, and on July 9, 2012, filed an Application for C.O.A. with the Fifth Circuit Court of Appeals.

Accordingly,

IT IS HEREBY ORDERED that the petitioner's Motion for Certificate of Appealability (**docket entry 45**), which the Court construes as a motion for reconsideration of its denial of C.O.A. pursuant to Rule 59(e), is DENIED.

SO ORDERED, this the 13th day of August, 2012.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE